

CALIFORNIA ACUPUNCTURE BOARD

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State of California
Department of Consumer Affairs
Arnold Schwarzenegger, Governor



(Approved June 7, 2004)

ACUPUNCTURE BOARD MEETING MINUTES

February 24, 2004
San Francisco Civic Center
San Francisco, California

Full Board February 24, 2004

MEMBERS PRESENT

Pei Li Zhong-Fong, L.Ac., Co-Chair
Shari Asplund, Co-Chair
Michael Eng
Joan C. Chang, L.Ac.
Min M. Chang
Justin Tin

STAFF PRESENT

Marilyn Nielsen, Executive Officer
Don Chang, Legal Counsel
Janelle Wedge, Administrative Coordinator
Christie Loftin, Examination Coordinator
Nancy Molinar, Education Coordinator
Helen Gathercole, Administrative Technician

MEMBERS ABSENT

GUEST LIST ON FILE

1. Call to Order and Establishment of a Quorum (S.Asplund, Co-Chair)

Co-Chair Shari Asplund called the Acupuncture Board meeting to order approximately 8:45 a.m. Roll was taken, a quorum was established.

2. CLOSED SESSION: Pursuant to Government Code Section 11126 (c) (1) and (c)(3) to discuss/take action on examination administration and disciplinary actions.

3. Co-Chair's Reports – Shari Asplund and Pei Li Zhong-Fong

Ms. Asplund reported that she and Ms. Zhong-Fong would be Co-Chairing the Acupuncture Board meetings this year and she would be overseeing this meeting. Ms. Asplund indicated the Board is completing the study of continuing education and acupuncture assistants and all the reports will be submitted to the Joint Legislative Sunset Review (JLSRC) September 1, 2004. The Little Hoover Commission (LHC) is scheduled to complete their study as well. Ms. Asplund expressed her appreciation for the staff and Board members continuous dedication this year and she is looking forward to the up and coming new Board appointees as well.

4. Executive Officer's Report – Marilyn Nielsen

Ms. Nielsen reported the Board has been instructed to complete and return their Annual Statement of Economic Interest Form 700 by April 1, 2004. The members are also required to take the Ethics Orientation-Training class every two years and this is the year it is due. Ms. Nielsen, referring to the documents distributed to the members, suggested they utilize the website or videotape and complete the certificate as soon as possible. Department of Consumer Affairs has scheduled a New Board Member Training Session in Southern California March 17, 2004, which members are required to attend one at least once within their first year. It would also benefit the Board by getting familiar with other boards and members. Ms. Nielsen announced that the 75th Chinese Medicine Day Celebration Banquet would be held March 13, 2004 at the Meriwa Restaurant in San Francisco and she would be attending to present a letter of recognition of the event from the Governor. Ms. Nielsen reported the office relocation went well, all systems are back up running, staff has unpacked, and the office is operating smoothly once more. The new file rolling system was installed in December and is a great asset to the office.

5. Approval of December 9, 2003 Meeting Minutes

SHARI ASPLUND MOVED AND MICHAEL ENG SECONDED THE MOTION TO APPROVE THE DECEMBER 9, 2003, MINUTES AS AMENDED. PASSED UNANIMOUSLY

6. Administrative Business – (Discussion/Action)

- a. Proposed Regulatory Amendment to Title 16, California Code of Regulations (previously noticed in California Regulatory Notice Register #Z-03-0570-10, publications date of May 30, 2003) Amending Sections 1399.415, 1399.416 and 1399.436, and Adding Sections 1399.434 and 1399.435.**

1. Compliance with Report Requirements of Governor Schwarzenegger's Executive Order S-2-03, Pending Regulatory Actions

Ms. Nielsen reported the Board filed the four report requirements defined in the Governor's Executive Order S-2-03 by the designated date. Ms. Nielsen stated there are three reports that should be noted, first, listing all regulatory packages and amendments that the Board adopted or appealed since January 6, 1999 to current. Second, a reassessment of the fiscal impact on all pending regulatory proposals, which the reassessment results were no different than the original findings. Third, identification of non-adoptive standards of general applications, and only one Standard was identified, which was the Board's school site visit manual. Ms. Nielsen advised she would keep the Board informed when additional information is received from the Administration.

2. Executive Order S-2-03, Request for Exception to Permit Continuation of the

Regulatory Process – Notice File No. Z-03-0520-10 Ms. Nielsen reported that on January 26, 2004 the Board filed a request to permit the continuation of the curriculum regulatory package, however on Friday, February 20, 2004, the Board was informed the request was denied as it did not meet the criteria as defined in Executive Order S-2-03. Mr. Chang, legal counsel, recommended if the Governor's office in their 180-day review, pursuant to Executive Order S-2-03, does not approve the pending regulations before May 2004, to authorize the Executive Officer to adopt the regulatory language without the 15-day amendment and proceed with filing curriculum regulations with DCA prior to May 30, 2004, which is the one-year date that the regulatory package expires. Once the final rulemaking package is submitted to the Department a 90-day extension on the rulemaking process can be requested.

PEI LI ZHONG-FONG MOVED AND SHARI ASPLUND SECONDED THE MOTION, IF THE GOVERNOR'S OFFICE IN THEIR 180-DAY REVIEW PURSUANT TO EXECUTIVE ORDER S-2-03 DOES NOT APPROVE THE PENDING REGULATIONS BEFORE MAY 2004, TO AUTHORIZE THE EXECUTIVE OFFICER TO ADOPT THE REGULATORY LANGUAGE WITHOUT THE 15-DAY AMENDMENT AND PROCEED WITH FILING CURRICULUM REGULATIONS WITH THE DCA DIRECTOR PRIOR TO MAY 30, 2004. ONCE THE FINAL RULEMAKING PACKAGE IS SUBMITTED TO THE DIRECTOR, REQUEST A 90-DAY EXTENSION ON THE RULEMAKING PROCESS. PASSED UNANIMOUSLY

b. Business and Professions Code Section 4934.1 – Little Hoover Commission’s Study and Evaluation Requirements on the Scope of Practice and Educational Requirements of an Acupuncturist, School Approval Process and Use of National Exam.

1. Cancellation of January 2004 Scope of Practice Panel

Ms. Nielsen indicated the Board’s Co-Chair, Ms. Zhong-Fong, received a letter on January 16, 2004 from Edward O’Neil, University of California San Francisco (UCSF), canceling the Acupuncture in California Scope of Practice meeting scheduled for January 21st and 22nd in San Francisco due to the increasingly difficult time UCSF was having to distinguish the research panel meeting from a public hearing. UCSF, in consultation with the Little Hoover Commission (LHC), decided to change the study methodology, cancel the meeting with the panel, and will be amending the contract revising the scope of work UCSF was to complete.

2. Commission’s January 22, 2004 Response to Board’s December 18, 2003 Letter of Concern Regarding Possible Conflict of Interest

Ms. Nielsen reported the Board sent a letter to Michael E. Alpert, Chair, LHC on December 18, 2003 reflecting the Board’s concern for the potential conflict of interest of any of the UCSF staff and panel members with national and special interests. In response Ms. Zhong-Fong and Ms. Asplund received a letter on January 21, 2004 from the LHC clarifying the roles of Dr. Edward O’Neil, director of the center and the principal investigator of the research project, and Ms. Dower. Dr. O’Neil advised it is his responsibility assure all aspects of the study are fair, accurate and factual and to assure the perceived bias or affiliation of any staff member or any individual expert does not distort the UC analysis. Ms. Nielsen indicated she has been in contact with James P. Mayer, Executive Director of LHC, and he assured her that LHC is in the process of renegotiating part of the their contract with UCSF. The contract will be amended, UCSF will conclude their report on the data comparison only and not hold interviews or panels from an outside source. UCSF will submit their report by late February or early March 2004 to LHC and based on the data the LHC will submit their report to the Joint Legislative Sunset Review Committee by September 2004.

c. Business and Professions Code Section 4934.2 – Study and Evaluation Requirements of the Acupuncture Board:

1. Comprehensive Study of Unlicensed Acupuncture Assistants

a. Committee Report/Recommendation (Committee Members: P. Zhong-Fong & S.Asplund)

Committee members Ms. Asplund and Ms. Zhong-Fong studied the results of the survey, examined the Massachusetts acupuncture assistant regulations and considered the written comments submitted to the Board. Ms. Asplund reported the Committee recommends regulation of the use of acupuncture assistants to assure consumer protection and safety by clearly defining the scope of what an assistant may do and the responsibilities of the licensee using an assistant. The committee recommends establishing regulation to define the requirements under which a licensed acupuncturist may employ an unlicensed assistant.

**MICHAEL ENG MOVED AND JUSTIN TIN SECONDED THE MOTION TO ADOPT SUBCOMMITTEE’S RECOMMENDATION TO SUPPORT REGULATING THE USE OF ACUPUNCTURE ASSISTANTS TO ASSURE CONSUMER PROTECTION AND SAFETY BY CLEARLY DEFINING THE SCOPE OF WHAT AN ASSISTANT MAY DO AND THE RESPONSIBILITIES OF THE LICENSEE USING AN ASSISTANT. THIS RECOMMENDATION WILL BE PRESENTED IN THE BOARD’S SEPTEMBER 1, 2004 REPORT TO THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE.
PASSED UNANIMOUSLY**

2. Continuing Education Auditing, Consistency and Relevancy of Approved Courses

a. Committee Report/Recommendation (Committee Members: P.Zhong-Fong & J.Chang)

Pei Li Zhong-Fong and Joan Chang reported the Committee is in the process of continuing their research by obtaining information and reviewing requirements from the Psychology, Dental, Medical and Pediatric Boards. Ms. Zhong-Fong indicated while reviewing the Dental Board's procedures, the Committee found the Dental Board has a more detailed description of what subject matter is allowed and what is not allowed. They also audit classes randomly in addition to auditing classes that have complaints filed against them. Ms Zhong-Fong said those were good ideas and that our Board should follow their example. Ms. Zhong-Fong also said that she did not remember which board, but she did remember reading that one board charged an administration fee for each course approved for CE credits. Ms. Zhong-Fong suggested we should consider also charging such a fee, which would clearly benefit the Board with additional funds to cover the extra workload approving every course. Joan Chang indicated she had concerns for the number of providers changing to distance education courses, but without offering a quality course.

b. Scheduling Consistency and Relevancy Subject Matter Expert Panel

Ms. Nielsen stated Ms. Zhong-Fong and Ms. Chang would be participating in the continuing education review panel in Los Angeles April 23, 2004. The panel will review the quality and relevancy of CE courses and provide the Board with their recommendations to establish guidelines and policy for staff when approving courses, and a list of specific courses they do and do not want to include.

c. Continuing Education Audit Report – Update on Compliance

Ms. Wedge reported for the calendar year 2003, 120 audit letters were sent to licensees auditing their reported continuing education. Fifty-two CE responses were verified and for the eight that did not respond, a letter of warning and notice for cite and fine were sent to each. For the second six months, letters were sent out to sixty licensees with a due date for response of February 20, 2004. As of February 19, 2004, thirty-five had responded, but verification of the CE is pending.

d. Budget Update

1. Fiscal Year 2003/2003 Mid Year Report

Ms. Nielsen reported on February 18, the Board received a letter from the Attorney General's office advising that the Board will exhaust its legal service budget on AG's cost by the end of March 2004. Ms. Nielsen indicated she would be assessing each line item and redirecting the funds to keep the enforcement program operating.

2. Governor's 2004/2005 Budget

Ms. Nielsen suggested the Board review the additional documents contained in the Governor's 2004/2005 Budget showing the funding breakdown of other DCA boards and bureaus, in addition to the Acupuncture Program Objectives Statement. Ms. Nielsen stated the major adjustments proposed for 2003-04 was implementing the staff reduction plan, which was submitted last spring. The other adjustment was an increase of \$86,000 approved by Department of Finance (DOF) to fund increasing Attorney General workload.

3. 2004/2005 BCP – Attorney General Augmentation

Ms. Nielsen reviewed the increase in the Attorney General's budget line of \$86,000, which was approved by the DOF and will proceed through the Assembly and Senate budget hearings.

e. Federation of Acupuncture and Oriental Medicine Regulatory Agencies (FAOMRA)

1. Proposed Licensure by Endorsement Language

Ms. Nielsen stated the Federation of Acupuncture and Oriental Medicine Regulatory Agencies (FAOMRA) meets twice a year in conjunction with the meetings of the Alliance and the American Association of Oriental Medicine (AAOM). The FAOMRA members endorsed language-allowing states to license qualified individuals through licensure by endorsement. Ms. Nielsen testified at the May 2002 FAOMRA meeting on this issue when originally discussed, about California's concerns about the lack of national standards with varying scopes and standards of care from state to state. This seems premature for California, until better standards and scope of practice are more equivalent across the United States. Ms. Nielsen asked the Board to review the proposal for consideration.

SHARI ASPLUND MOVED AND MICHAEL ENG SECONDED THE MOTION TO "NOT" SUPPORT THE ISSUE OF LICENSURE BY ENDORSEMENT AS REQUESTED BY THE FEDERATION OF ACUPUNCTURE AND ORIENTAL MEDICINE REGULATORY AGENCIES (FOAMRA) AT THIS TIME, UNTIL INDIVIDUAL STATES' SCOPES OF PRACTICE AND STANDARDS ARE MORE CONSISTENT, AND AUTHORIZED THE EXECUTIVE OFFICER TO SEND A RESPONSE LETTER TO FAOMRA. PASSED UNANIMOUSLY

2. April 29, 2004 and May 1, 2004 Meeting in Southern California

Ms. Nielsen suggested the Board members attend the April 29 and May 1, 2004 FAOMRA meeting in Los Angeles, which is the first time in over a year that FAOMRA has met on the West Coast. She indicated it was important for California to stay active in the organization and interact with other states boards on cross cutting issues.

f. Consumer Brochure Revision

Ms. Asplund reported the brochure is being revised to encompass the Board's address change, new Governor, DCA Director and Agency Secretary, in addition to addressing some of the issues the Little Hoover Commission pointed out. Ms. Asplund stated she would be adding the concern for herb-drug interactions.

7. Enforcement Business – (Discussion/Action)

a. Enforcement Case Report

Ms. Nielsen reported since July 1, 2003 72 new complaints have been filed with the Board, 26 formal investigations are pending with Division of Investigation, and there are 31 open disciplinary cases and 15 open probation cases. The highest percentage by category still remains unprofessional conduct and criminal charges and convictions.

8. Examination Business – (Discussion/Action)

a. January 20, 2004 Licensing Examination Performance Report

Ms. Nielsen reported there were 461 candidates who took the January 2004 licensing exam and 233 (50.5%) achieved a passing score of 119 or higher (119 of 175 possible points). Overall, the first time takers passing rate was 70%, while re-examinees was only 20%. Ms. Nielsen stated the next examination will be administered July 30, 2004, and the dates of the 2005 exam have been scheduled for January 13, 2005 and July 12, 2005, which have been posted on the Board's website.

9. Education Business - (Discussion/Action)

a. China International Medical University, Los Angeles, CA

Ms. Nielsen reported at the December 2003 Board meeting that Alhambra Medical University Management had a teaching agreement with CIMU, however, the Board received a letter from AMUM

they are no longer consulting or assisting CIMU, and that as of October 16, 2003 all services have been discontinued. The Board was scheduled to conduct a site visit, however the visit was canceled per a request from CIMU for a deferral to allow for Professor Jiang's complete recovery from a serious medical condition.

b. Acupuncture & Integrative Medicine College, Berkeley (a.k.a.: Meiji) – Update Report

Ms. Nielsen indicated that Ms. Molinar contacted Acupuncture & Integrative Medicine College (AIMC) to request an update of the recent changes to the school. The Board received a letter from AIMC on February 18, 2004 clarifying the changes to the Board, the oversight and the organizational chart. Ms. Nielsen stated the Board's concern was for the changes to their administration and financial status. At this time the school has found a new financial source and has restructured. However, the Board still has concerns and will continue to monitor their progress. Penelope Ward, Accreditation Commission for Acupuncture & Oriental Medicine (ACAOM), informed the Board that ACAOM would be doing another site visit March 31, 2004. Brian Fennen, AIMC consultant, indicated there are many enthusiastic people involved. He explained Bruce Sturgeon is coming in as Provost and Kenneth Kluscor as President & CEO. Mr. Fennen stated the students had concerns the school would close due to the lack of funding, however the school has received considerable financial support.

c. Pending School Site Visits

Ms. Nielsen reported the Board has scheduled a site visit for the following Schools:

- Nobel University, Los Angeles, CA, on March 22-23, 2004, with Site Team member, Joan Chang.
- China International, Los Angeles, CA, on March 24, 2004.
- Stanton University, Garden Grove, CA, on April 1-2, 2004, with Site Team member, Pei-Li Zhong-Fong.
- California Union University, Fullerton, CA, schedule date is pending.
- Academy for Five Elements, Hallendale, FL. New application, schedule date is pending.

Ms. Nielsen informed the Board that representatives of the visited schools would attend the next Board meeting to discuss the findings of the school site reports.

10. Review Draft 2004-2005 Strategic Plan

Ms. Asplund reported the Board worked on the Strategic Plan at the December Board meeting and Ms. Nielsen submitted a draft for the Board in areas that may need clarification. The Board reviewed each strategic issue and made their changes to the draft. Ms. Nielsen indicated the final plan would be presented at the June Board meeting for adoption.

11. Public Comment Period:

Brian Fennen, CAOMA, stated that CAOMA had a meeting and discussed the issue of the study of acupuncture assistants and found there is a legal issue because an unlicensed person can not perform moxibustion and cupping. If an acupuncture assistant treats a patient with the use of moxibustion, cupping and the removal of needles, this is a potential safety risk. The skills are more involved than what was thought, but if the acupuncture assistant were to be required to be further certified in this skill along with the practitioner, the safety risk would be resolved. Mr. Fennen indicated other assisting duties such as massage therapy or mixing herbs would not be legally necessary to be certified and the Board could educate the profession to be more aware of the legal responsibilities involving assistants. Mr. Fennen stated in regards to the proposed licensure by endorsement language, CAOMA continues to support the idea, if the education, the examination standards and the scope of practice be equivalent.

12. Adjournment

Acupuncture Board meeting adjourned at approximately 12:30p.m.